



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, D.C. 20554

News Media Information: (202) 418-0500

Fax-On-Demand: (202) 418-2830

Internet: <http://www.fcc.gov>

<ftp.fcc.gov>

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FM Translator Auction No. 83 **Non-Mutually Exclusive Applications**

**Media Bureau Announces Form 349 Application Deadline, Processing Procedures,
and Fifteen-Day Petition to Deny Period**

Report No. AUC-03-83-C

On February 6, 2003, the Media Bureau (the “Bureau”) and the Wireless Telecommunications Bureau announced an auction filing window, from March 10, 2003 to March 14, 2003, for the filing of applications for new FM translator stations and major modifications to authorized FM translator stations in the non-reserved FM band.¹ The filing window was subsequently extended to March 17, 2003.² On December 11, 2007, the Federal Communications Commission released *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking.³ The *Third Report and Order* established a going-forward limit of ten pending short-form applications per applicant from FM translator Auction No. 83 and directed the Bureau to resume processing of applications of those applicants in compliance with the cap. By this Public Notice, the Audio Division, under delegated authority, releases a list of timely filed applications, from applicants that comply with

¹ *FM Translator Auction Filing Window and Application Freeze; Notice and Filing Requirements Regarding March 10 –14, 2003 Window for Certain FM Translator Construction Permits; Notice Regarding Freeze on the Acceptance of FM Translator and FM Booster Minor Change and FM Booster New Construction Permit Applications from February 8 to March 14, 2003, Public Notice*, 18 FCC Rcd 1565 (2003) (“*February 2003 Window Public Notice*”). Applicants were required to file electronically a FCC Form 175, Application to Participate in an FCC Auction. They also were required to file Section I, the Tech Box of Section III-A, and the Section VI Certification of FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station. These sections permitted the staff to determine mutual exclusivities among applicants.

² *FM Translator Auction Filing Window and Application Freeze Extended to March 17, 2003, Public Notice*, 18 FCC Rcd 3275 (2003).

³ See *Creation of a Low Power Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, FCC 07-204 (rel. December 11, 2007) (“*Third Report and Order*”).

the cap limit, that are not mutually exclusive with any other applications submitted in the filing window.⁴ These “singleton” applications are exempt from the Commission’s auction procedures.⁵

Required Form and Fees: All applicants listed in Attachment A must submit a complete FCC Form 349 by June 20, 2008.⁶ All applicants also must submit the required application filing fee, if applicable, and a FCC Form 159, Remittance Advice.⁷ Applicants that previously filed complete applications on FCC Form 349 prior to the 2003 FM translator filing window must comply with these requirements. Applicants may seek refunds from the Office of Managing Director of filing fees submitted with such prior-filed applications.⁸

How to File: Applicants must file complete FCC Form 349 applications **electronically** through the Media Bureau’s Consolidated Database System (CDBS) online electronic forms filing system. Additional information regarding electronic application filing is provided in *Public Notice, Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301-CA, 346, 349 and 350*.⁹ When filing the FCC Form 349, applicants must select “Long Form Application for FM Translator Auction Window 83” on the Pre-form for Form 349 (Question 2 – Application Purpose). In addition, the CDBS file number previously issued to the Form 349 application submitted in the FM translator auction filing window must be entered in the field “Eng. Proposal File Number.” Instructions for use of the electronic filing system are available in the CDBS User’s Guide, which can be accessed from the electronic filing web site at:

<http://www.fcc.gov/mb>

⁴ See *Media Bureau Suspends Dismissal of FM Translator Applications Related to Processing Cap* ((MM Docket No. 99-25), Public Notice, DA 08-801 (MB rel. Apr. 7, 2008) (directing the staff to continue to process the applications of any applicant with ten or fewer applications on file).

⁵ See 47 U.S.C. § 309(j); 47 C.F.R. § 73.5005(d); *First Report and Order, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 13 FCC Rcd 15920 (1998) (“*Broadcast Auction First Report and Order*”).

⁶ See 47 U.S.C. § 8; 47 C.F.R. §§ 0.401(b), 1.1104, 1.1109, 1.1110, 73.5005(d), 73.3512, 74.1233(d). Generally, applicants whose short form applications are determined to be non-mutually exclusive must file the appropriate long form application within thirty days of public notice identifying such non-mutually exclusive applications. See e.g. 47 C.F.R. § 73.5005(d). Given the significant volume of FM translator applications filed in response to the *February 2003 Window Public Notice*, we hereby extend the 30-day period for the filing of long form applications. *Broadcast Auction First Report and Order*, 13 FCC Rcd at 15984 (retaining discretion to extend the 30-day period for the filing of long form applications upon good cause showing).

⁷ See Schedule of Charges at 47 C.F.R. § 1.1104. Method and form of payment are addressed in 47 C.F.R. §§ 1.1109, 1.1110. See also the Media Services Application Fee Filing Guide and the FCC Form 349 instructions. The general exemptions to charges are specified in 47 C.F.R. § 1.1114. Government entities are exempt from this fee requirement. Also exempt are applicants for noncommercial educational FM translator facilities, as defined in 47 C.F.R. § 74.1201(c). When filing a fee-exempt application, an applicant must complete Section I, item 3 of Form 349 and provide an explanation as appropriate.

⁸ See 47 C.F.R. § 1.1113 (return or refund of charges).

⁹ 17 FCC Rcd 8575 (MB 2002).

Internet access to the CDBS public access system at the Commission's Web Site requires a user to have a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later. For technical assistance with electronic filing, call the Media Bureau CDBS Help Desk at (202) 418-2MMB.

The staff will dismiss FCC Form 349 applications not submitted in accordance with the procedures described above. The staff will dismiss, without further processing, the previously filed technical submissions of any applicant listed in Appendix A that fails to electronically submit the complete FCC Form 349 long form application by June 20, 2008. The filing deadline will be strictly enforced.¹⁰

Petition to Deny Filing Period. The staff will study the submitted "singleton" FCC Form 349 applications for acceptability. It will subsequently issue CDBS-generated Public Notices entitled "Broadcast Applications" listing those applications determined to be acceptable for filing. A petition to deny the FCC Form 349 application must be filed within 15 days following the release of the pertinent Public Notice.¹¹ Interested parties should monitor these CDBS Broadcast Applications Public Notices.

For additional information, contact Rob Gates of the Audio Division at (202) 418-0986.

This Public Notice contains the following Attachment:

Attachment A: Non-Mutually Exclusive FM Translator Applications Not Subject to Auction

¹⁰ See 47 C.F.R. § § 73.5005, 74.1233(d). Pursuant to procedures adopted in the *Broadcast Auction First Report and Order*, non-mutually exclusive applicants filing FCC Form 349 long form applications may change the technical proposals specified in their previous, auction window short form filing. However, such non-mutually exclusive applicants may not specify in the complete FCC Form 349 long form application a change in the proposed facility that constitutes a major change from the facility specified earlier, nor may they create new mutual exclusivities. Applicants specifying such major changes or creating new application conflicts will be dismissed without further opportunity to amend. See *Broadcast Auction First Report and Order*, 13 FCC Rcd at 15991.

¹¹ See 47 C.F.R. § § 73.5006(b), 74.1233(d)(4).